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HOUSE BILL 216

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Jeannette O. Wallace

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO ELECTIONS; PROVIDING THAT PROPOSALS TO AMEND THE
CONSTITUTION OF NEW MEXICO BE SUBMITTED TO THE VOTERS BY MAILED
BALLOT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-16-1 NMSA 1978 (being Laws 1969,
Chapter 240, Section 374) is amended to read:

"1-16-1. STATE CONSTITUTIONAL AMENDMENTS--OTHER STATEWIDE
QUESTIONS--APPLICATION OF ELECTION CODE.--

A. At all elections at which any proposed
constitutional amendment [~~or question~~] is submitted to a vote
of the electors, the election shall be:

(1) conducted by all-mailed ballot pursuant to
the provisions of this article; and

(2) otherwise held and conducted in accordance

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1 with other provisions of the Election Code.

2 B. Other statewide questions submitted to a vote of
3 the electors shall be held and conducted in accordance with the
4 Election Code."

5 Section 2. Section 1-16-5 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 378, as amended) is amended to read:

7 "1-16-5. STATE CONSTITUTIONAL AMENDMENTS--BALLOT--FORMS
8 [~~FOR EMERGENCY PAPER BALLOTS AND ABSENTEE BALLOTS~~].--

9 A. All [~~emergency paper ballots and absentee~~
10 ballots proposing constitutional amendments shall have printed
11 thereon in both English and Spanish the full title of the joint
12 resolution proposing the constitutional amendment and the
13 constitutional amendment number assigned to the joint
14 resolution by the secretary of state. Below the printed title,
15 there shall be printed on the ballot two one-quarter-inch blank
16 boxes. Opposite one of the blank boxes, there shall be printed
17 in both English and Spanish the [~~words~~] word "FOR", and
18 opposite the other blank box shall be printed in both such
19 languages the [~~words~~] word "AGAINST".

20 B. There shall be printed across the top of such
21 ballot the following: "Instructions to voters: If you desire
22 to vote for the amendment, mark a cross (X) or a check (T) or
23 any other mark clearly indicating intention in the G opposite
24 the [~~words~~] word "FOR". If you desire to vote against the
25 amendment, mark a cross (X) or a check (T) or any other mark

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1 clearly indicating intention in the G opposite the ~~[words]~~ word
2 "AGAINST". "

3 Section 3. Section 1-16-6 NMSA 1978 (being Laws 1969,
4 Chapter 240, Section 379, as amended) is amended to read:

5 "1-16-6. STATE CONSTITUTIONAL AMENDMENTS-- MARKING
6 ~~[EMERGENCY PAPER BALLOTS AND ABSENTEE]~~ BALLOTS. -- A voter
7 desiring to mark his ~~[emergency paper ballot or absentee]~~
8 ballot for or against a proposed constitutional amendment shall
9 do so in the manner specified in the instructions printed on
10 the ~~[emergency paper ballot or absentee]~~ ballot. "

11 Section 4. Section 1-16-9 NMSA 1978 (being Laws 1969,
12 Chapter 240, Section 381, as amended) is amended to read:

13 "1-16-9. STATE CONSTITUTIONAL AMENDMENTS-- OTHER
14 QUESTIONS-- SINGLE ~~[EMERGENCY]~~ PAPER ~~[BALLOT AND ABSENTEE]~~
15 BALLOT. --

16 A. Proposed constitutional amendments ~~[or other~~
17 ~~questions]~~ submitted to the voters ~~[on emergency paper ballots~~
18 ~~or absentee ballots]~~ at any election shall be printed upon one
19 ballot only.

20 B. Other statewide questions submitted to the
21 voters on emergency paper ballots or absentee ballots shall be
22 printed upon one ballot only."

23 Section 5. Section 1-16-12 NMSA 1978 (being Laws 1969,
24 Chapter 240, Section 385, as amended) is amended to read:

25 "1-16-12. ~~[STATE CONSTITUTIONAL AMENDMENTS]~~ STATEWIDE

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1 QUESTION--GENERAL ELECTIONS. --At all general elections at which
2 any [~~proposed constitutional amendment or question~~] statewide
3 question other than a proposed constitutional amendment is
4 submitted to the voters, the emergency paper ballot or absentee
5 ballot on the proposed [~~constitutional amendment or~~] question
6 shall be printed on the emergency paper ballot or absentee
7 ballot for the election of officers. "

8 Section 6. A new section of Chapter 1, Article 16 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS-- BALLOTS--
11 ENVELOPES. --

12 A. For each election at which a proposed
13 constitutional amendment is to be submitted to the voters, the
14 secretary of state shall prescribe the form of, procure and,
15 not less than fifty-six days before the election, distribute to
16 each county clerk a supply of:

- 17 (1) ballots;
- 18 (2) official inner envelopes for use in
19 sealing completed ballots;
- 20 (3) official mailing envelopes for use in
21 returning the official inner envelopes to the county clerk;
- 22 (4) ballot instructions describing how to
23 complete and return ballots; and
- 24 (5) official transmittal envelopes for use by
25 the county clerk in mailing ballot materials.

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1 B. The reverse of each official mailing envelope
2 shall contain a form, to be executed by the voter completing
3 the ballot, that contains such affirmations as the secretary of
4 state shall, by rule, prescribe. "

5 Section 7. A new section of Chapter 1, Article 16 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS--MAILED
8 BALLOTS--REGISTER. --

9 A. For each election at which a proposed
10 constitutional amendment is submitted to a vote of the
11 electors, a county clerk shall keep a register of all
12 registered voters in the county, on which he shall enter:

- 13 (1) the name and address of each registered
14 voter;
- 15 (2) the date of mailing of the ballot to the
16 voter;
- 17 (3) the voter's precinct; and
- 18 (4) the date and time the completed ballot was
19 received from the voter by the county clerk.

20 B. Within twenty days after receiving the ballot
21 materials from the secretary of state, the county clerk shall
22 mail a ballot to each registered voter.

23 C. The ballot register is a public record open to
24 public inspection in the county clerk's office during regular
25 office hours.

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1 D. The county clerk shall deliver to the absent
2 voter precinct board on election day a complete list of all
3 registered voters with applicable information shown in the
4 ballot register for each voter up to 5:00 p.m. on the Thursday
5 preceding the election. The county clerk shall deliver a
6 signature roster containing the same information as the lists
7 to the absent voter precinct board.

8 E. The county clerk shall transmit to the secretary
9 of state and to the county chairman of each of the major
10 political parties in the county a complete copy of entries made
11 in the ballot register. Such transmissions shall be made on
12 the Friday immediately following the election. "

13 Section 8. A new section of Chapter 1, Article 16 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS--MAILED
16 BALLOTS--MANNER OF VOTING.--A person voting on a proposed
17 constitutional amendment shall secretly mark the ballot in the
18 manner provided in Section 1-16-5 NMSA 1978, place it in the
19 official inner envelope and securely seal the envelope. The
20 voter shall then place the official inner envelope inside the
21 official mailing envelope and securely seal the envelope. The
22 voter shall then complete the form on the reverse of the
23 official mailing envelope, which shall include an affirmation
24 by the voter under penalty of perjury that the facts stated in
25 the form are true. "

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1 Section 9. A new section of Chapter 1, Article 16 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS--MAILED
4 BALLOTS--RECEIPT OF BALLOTS BY CLERK.--

5 A. A county clerk shall mark on each completed
6 official mailing envelope the date and time of receipt in the
7 clerk's office, record this information in the ballot register
8 and safely keep the official mailing envelope unopened in a
9 locked and number-sealed ballot box until it is delivered to
10 the proper absent voter precinct board or until it is canceled
11 and destroyed in accordance with law.

12 B. The county clerk shall accept completed official
13 mailing envelopes until 7:00 p.m. on election day. A completed
14 official mailing envelope received after that time shall not be
15 delivered to an absent voter precinct board but the county
16 clerk shall record, in the ballot register, the date and time
17 of receipt. The county clerk shall preserve all late official
18 mailing envelopes until the time for election contests has
19 expired, at which time, in the absence of a restraining order,
20 he shall destroy the envelopes without opening or permitting
21 the contents to be examined, cast, counted or canvassed.

22 C. At 5:00 p.m. on the Monday immediately preceding
23 the date of election, the county clerk shall record the numbers
24 of the unused ballots and shall publicly destroy in the county
25 clerk's office all such unused ballots. The county clerk shall

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1 execute a certificate of destruction, which shall include the
2 numbers on the ballots destroyed. A copy of the certificate of
3 destruction shall be sent to the secretary of state. "

4 Section 10. A new section of Chapter 1, Article 16 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS- - HANDLING
7 BALLOTS BY ABSENT VOTER PRECINCT BOARDS. - -

8 A. Before opening any official mailing envelope,
9 the presiding judge and the election judges shall determine
10 that the required information has been completed on the reverse
11 side of the official mailing envelope.

12 B. If the voter's signature is missing, the
13 presiding judge shall write "Rejected" on the front of the
14 official mailing envelope. The election clerks shall enter the
15 voter's name in the signature rosters and shall write the
16 notation "Rejected - Missing Signature" in the "Notations"
17 column of the signature rosters. The presiding judge shall
18 place the official mailing envelope unopened in an envelope
19 provided for rejected ballots, seal the envelope and write the
20 voter's name on the front of the envelope and deposit it in the
21 locked ballot box.

22 C. The accredited challengers may examine the
23 official mailing envelope and may challenge the ballot of any
24 voter because the official mailing envelope has been opened
25 prior to being received by the absent voter precinct board.

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1 Upon the challenge of a ballot, the election judges and the
2 presiding election judge shall follow the same procedure as
3 when ballots are challenged when a person attempts to vote in
4 person. If a challenge is upheld, the official mailing
5 envelope shall not be opened but shall be placed in an envelope
6 provided for challenged ballots. The same procedure shall be
7 followed in canvassing and determining the validity of
8 challenged ballots pursuant to this section as with other
9 challenged ballots.

10 D. If an official mailing envelope has been
11 properly subscribed and the voter has not been challenged:

12 (1) the election judges shall open the
13 official mailing envelope and deposit the ballot in its
14 still-sealed official inner envelope in the locked ballot box;
15 and

16 (2) the election clerks shall enter the
17 voter's name and residence address as shown on the official
18 mailing envelope in the signature rosters.

19 E. Prior to the closing of the polls, the election
20 judges and the presiding election judge may either remove the
21 ballots from the official inner envelopes and count and tally
22 the results or, under the personal supervision of the presiding
23 election judge and one election judge from each party, count
24 and tally the ballots on an electronic voting machine the same
25 as if the voter had voted in person. It is unlawful for any

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1 person to disclose the results of a count and tally or the
2 registration on a voting machine of ballots prior to the
3 closing of the polls.

4 F. Ballots shall be counted and tallied on an
5 electronic voting machine as provided in the Election Code.

6 G. Absent voter precinct polls shall close at the
7 time prescribed by the Election Code for other polling places,
8 and the results of the election shall be certified as
9 prescribed by the secretary of state.

10 H. The county clerk may convene the absent voter
11 precinct board no more than three days before the day of the
12 election to alphabetize, enter on the roster and sort the
13 ballots by legislative district; provided that no member of the
14 absent voter precinct board shall open an official mailing
15 envelope or count and canvass any ballot prior to the day of
16 the election. "

17 Section 11. A new section of Chapter 1, Article 16 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS--CANVASS--
20 RECOUNT OR RECHECK--DISPOSITION.--If electronic voting machines
21 are not used to register the mailed ballots for proposed state
22 constitutional amendments, the ballots shall be canvassed,
23 recounted and disposed of in the manner provided by the
24 Election Code for the canvassing, recounting and disposition of
25 emergency paper ballots. If voting machines are used to

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1 register the ballots, the ballots shall be canvassed and
2 rechecked in the manner provided by the Election Code for the
3 canvassing and rechecking of ballots cast on a voting machine;
4 provided, in the event of a contest, voting machines used to
5 register the ballots shall not be rechecked but the ballots
6 shall be recounted in the manner provided by the Election Code
7 for the recounting of emergency paper ballots. "

8 Section 12. A new section of Chapter 1, Article 16 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] STATE CONSTITUTIONAL AMENDMENTS-- VOTING
11 WHEN NO MAILED BALLOT RECEIVED. --

12 A. Except as provided in this section, a person
13 shall not vote in person on the question of a proposed state
14 constitutional amendment.

15 B. At any time prior to 5:00 p.m. on the Monday
16 immediately preceding the date of the election, a registered
17 voter who has not received a mailed ballot for a proposed state
18 constitutional amendment may execute, in the office of the
19 county clerk of the county where he is registered to vote, a
20 sworn affidavit stating that he did not receive the ballot.
21 Upon receipt of the sworn affidavit, the county clerk shall
22 issue the voter a replacement ballot.

23 C. If a proposed state constitutional amendment is
24 submitted to the voters in a general election, a voter who has
25 not received the ballot by mail as of the date of the election

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1 may present himself at his assigned polling place and shall be
2 permitted to vote on a replacement ballot. The replacement
3 ballot shall be placed by the voter in an official inner
4 envelope. The voter shall then place the inner envelope inside
5 an official outer envelope and securely seal the envelope. The
6 voter shall then complete the form on the reverse of the outer
7 envelope, which shall include an affidavit of nonreceipt of the
8 mailed ballot and an affirmation by the voter under penalty of
9 perjury that the facts stated in the form are true. The
10 presiding election judge shall put all outer envelopes in a
11 special envelope provided for that purpose by the county clerk,
12 seal it and return it to the county clerk along with the
13 machine tally sheets. The sealed envelope shall not be put in
14 the locked ballot box.

15 D. Upon receipt of replacement ballots, the county
16 clerk, no later than forty-eight hours after the close of the
17 election, shall remove the outer envelopes and, without
18 removing or opening the inner envelopes, determine if a mailed
19 ballot was received by the county clerk from the voter by 7:00
20 p.m. on election day. Upon making that determination, the
21 county clerk shall remove the inner envelope without opening
22 it, retain the outer envelope with the other election returns,
23 place the inner unopened envelope in a secure container and
24 transmit the container to the county canvassing board for
25 inclusion in the canvass of that county for the appropriate

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1 precinct.

2 E. The secretary of state shall prescribe and
3 furnish the affidavits, replacement ballots and necessary
4 envelopes for purposes of this section and shall adopt rules
5 deemed necessary to preserve the secrecy of the replacement
6 ballot. "

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